

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-1019

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Steven Paul Garcia,	*	
	*	
Appellant,	*	
	*	
v.	*	
	*	Appeal from the United States
State of Minnesota,	*	District Court for the
	*	District of Minnesota.
Appellee,	*	
	*	[UNPUBLISHED]
Lynn M. Dingle, Warden; MCF	*	
Willow River Moose Lake	*	
Correctional Facility,	*	
	*	
Respondents.	*	

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Submitted: October 17, 2000  
Filed: October 20, 2000

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Before McMILLIAN, BOWMAN, and LOKEN, Circuit Judges.

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PER CURIAM.

In a Minnesota state court, Steven Paul Garcia pleaded guilty to attempted first-degree criminal sexual conduct and was sentenced to an agreed-upon sentence of 81 months. The sentence was not complete, however, because it failed to require the statutorily mandated ten-year period of conditional release that Minnesota requires for

sex offenders like Garcia, who had a prior criminal sexual conduct conviction. After the sentence had been affirmed by the Minnesota Court of Appeals, the state requested the sentencing court to impose the statutorily mandated ten-year term of conditional release, and the sentencing court did so. Garcia appealed. The Minnesota Court of Appeals and Minnesota Supreme Court affirmed the addition of the term of conditional release, giving Garcia the option of moving to withdraw his guilty plea. Garcia then proceeded to seek federal habeas relief, arguing, as he had in the state courts, that the state's alteration of his original sentence was unlawful and, aside from violating state law, amounted to a violation of the Double Jeopardy and Due Process Clauses. The District Court<sup>1</sup> rejected Garcia's claims and denied his 28 U.S.C. § 2254 petition.

In this appeal, Garcia renews his arguments. Like the District Court, we reject them. Inasmuch as a sentence that does not conform to a mandatory statutory penalty is subject to correction by the sentencing court, and since Garcia was given the option of withdrawing his guilty plea, in the circumstances of this case his due process claim must fail. Similarly, his double jeopardy claim lacks merit. The Double Jeopardy Clause is not violated when a trial court corrects a sentencing error to conform to the governing statute.

The report and recommendation of the Magistrate Judge, which the District Court adopted, is thorough and well-considered. There being no error of law, the order of the District Court is AFFIRMED. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota, adopting the report and recommendation of the Honorable Raymond L. Erickson, United States Magistrate Judge for the District of Minnesota.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.